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Leasing gladiators in Rome – a problem solved

Posted on 17/05/2012 by [John Cairns](#)

A text with which those of us who teach Roman law like to tease our students is Gaius, Institutes, 3.146. Gaius poses to his students what appears to be a hypothetical problem. If I provide gladiators to you on the understanding I get 20 for each who come unharmed and 1,000 for those who are killed and maimed, is this lease or sale? He says the received opinion is that it is lease of those who return and sale of those killed or maimed. Events determine the result: it is either a conditional sale or lease of each.

This text has generated much discussion, which I shall ignore. But your blogger's colleague, Dr Paul du Plessis, has posited an elegant solution to this conundrum in his new book, *Letting and Hiring in Roman Legal Thought, 27BCE-284CE* (Leiden/Boston: Brill, 2012), at pp. 106-8. He points out that contracts for gladiators were for a show and that the Lanista (the owner, agent or venture capitalist) was not letting out the enslaved gladiators under a contract to let a res, but rather was contracting to provide gladiators to put on a show: it was a contract for the performance of a task, a contract for operae.

Crucial here, of course, is that one must recognise that in practice the Romans went in for recording their contracts in detail in writing, called leges, and Gaius' discussion is expressly in the context of discussing the lex or written contract.



